Sistem Penyuraian Trafik KL Barat Sdn Bhd v Kenny Heights Development Sdn Bhd & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01–62 OF 2005
LOW HOP BING, ABDUL MALIK ISHAK AND KN SEGARA JJCA
21 JANUARY 2009

Land Law — Acquisition of land — Compensation — Dissatisfaction on quantum of compensation by appellant — Whether appellant person interested in land — Whether had standing to object on amount of compensation — Land Acquisition Act 1960 ss 2, 37, 37(1)(b)

In accordance to a privatisation agreement between the appellant and the Federal Government of Malaysia, the appellant, as the concessionaire of SPRINT Highway, was responsible in paying compensation for compulsory acquisition of the pieces of land by the second respondent to build the highway. The first respondent knew from the outset that the appellant had to pay the compensation for the land acquisition. However, the first respondent who was dissatisfied with the quantum of compensation proceeded to the High Court by way of land reference. Thus, the appellant in the land reference applied for leave to intervene as a party and to lodge Form N under s 37 of the Land Acquisition Act 1960 ('the LAA'). The first respondent objected to the appellant's application to intervene as a party but the second respondent supported the application. The High Court dismissed the appellant's application due to questionable validity of the privatisation agreement and the functions of Highway Authority Malaysia, Lembaga Lebuhraya Malaysia ('LLM'), under the Highway Authority Malaysia (Incorporation) Act 1980 ('the 1980 Act'). The trial judge also drew an adverse inference against the appellant for not producing the entire privatisation agreement in its application to intervene. Further, the trial judge declined to accept the appellant's obligations to pay the compensation in accordance to the privatisation agreement. The first respondent submitted that the appellant had no direct legal interest in the land reference. Hence this appeal.

Held, allowing the appeal with costs:

(1) (per **Low Hop Bing JCA**) In accordance to s 2 of the LAA, the appellant had a direct legal interest, as to the amount of compensation

payable in respect of the pieces of land acquired pursuant to the LAA for the construction of the Highway. The construction of the Highway is a public utility and consequently in the land reference, it comes under s 37 of the LAA in respect of the lands. The appellant had the standing to make an application to the court and to object to the amount of the compensation under s 37(1)(b) of the LAA 1960 (see para 25).

(2) (per **Low Hop Bing JCA** and **Abdul Malik Ishak JCA** The appellant was, in fact, a 'person interested' in the compensation payable to the first respondent pursuant to s 2 of the LAA and O 15 r 6(2)(b) of the Rules of the High Court 1980 ('RHC'). Thus, the appellant should rightly be added as a party in the land reference proceedings (see paras 33 & 37).

(3) (per **Abdul Malik Ishak JCA** The LLM had acquired the scheduled land for the purposes of the public highway without the Federal Government expending its own fund. The LLM as the representative of the Federal Government did not dispute the existence of the privatisation agreement nor did it dispute the appellant's obligation to pay the compensation to the first respondent. The LLM was merely a conduit for the payment of the compensation which was payable by the appellant and that the legal interest of the appellant was a direct interest arising from its actual legal obligation under the privatisation agreement notwithstanding s 22 of the 1980 Act (see paras 55 & 56).

(4) (per **Abdul Malik Ishak JCA** The parts of the privatisation agreement disclosed by the appellant with the consent of the Ministry of Works to the court by way of affidavits contained the specific clauses on the appellant's obligation in respect of the land acquisitions and/or pay the necessary compensation. Despite that the appellant was constrained from producing the privatisation agreement in its entirety by extraneous factors beyond its control, there was sufficient material before the court to enable it to exercise its powers under O 15 r 6(2)(b) of the RHC (see paras 61e & f).

(5) (per **KN Segara JCA**, dissenting) The appellant failed to identify the capacity in which it intended to intervene. The correct prayer was that the proposed intervener be added as 'co-defendant' and not as 'intervener'. However, the second respondent under the provisions of the LAA could not add the appellant as a co-defendant in a reference to court. Intervener proceedings were therefore eminently unsuitable in a reference to court by the second respondent (see para 71 & 72).

(6) (per **KN Segara JCA**, dissenting) The purported responsibility to pay by the appellant was irrelevant to the restricted scope of the inquiry under s 44 of the LAA. It was beyond dispute that LLM was legally and statutorily obliged to pay the compensation sum under s 22 of the 1980

Act. Thus, the application to intervene by the appellant in the reference to court by the second respondent pursuant to the provisions of the LAA was without merit and not sustainable (see paras 74 & 76).

(7) (per **KN Segara JCA**, dissenting) Further, the issue in the reference was not as to which party was responsible for the payment of the compensation sum to the first respondent but on the question of the quantum of the compensation sum awarded to the first respondent by the second respondent (see para 76).

[Bahasa Malaysia summary

Menurut perjanjian penswastaan di antara perayu dan Kerajaan Persekutuan Malaysia, perayu, sebagai pemegang konsesi Lebuhraya SPRINT, bertanggungjawab untuk membayar pampasan pengambilan wajib ke atas beberapa bidang tanah oleh responden kedua untuk membina Lebuhraya tersebut. Responden pertama mengetahui dari mula lagi bahawa perayu perlu membayar pampasan untuk pemerolehan tanah tersebut. Walau bagaimanapun, responden pertama yang berasa tidak puas hati dengan kuantum pampasan telah merujuk ke Mahkamah Tinggi melalui rujukan tanah. Oleh itu, perayu dalam rujukan tanah tersebut memohon kebenaran untuk mencelah sebagai satu pihak dan untuk memasukkan Borang N di bawah s 37 Akta Pengambilan Tanah 1960 ('APT'). Responden pertama membantah permohonan perayu untuk mencelah sebagai satu pihak tetapi responden kedua menyokong permohonan itu. Mahkamah Tinggi telah menolak permohonan perayu kerana mempersoalkan kesahan perjanjian penswastaan dan fungsi Pihak Berkuasa Lebuhraya Malaysia, Lembaga Lebuhraya Malaysia ('LLM'), di bawah Akta Lembaga Lebuhraya Malaysia (Perbadanan) 1980 ('Akta 1980'). Hakim perbicaraan juga membuat inferens bertentangan terhadap perayu kerana tidak mengemukakan keseluruhan perjanjian penswastaan dalam permohonannya untuk mencelah. Tambahan, hakim perbicaraan enggan menerima tanggungjawab perayu untuk membayar pampasan menurut perjanjian penswastaan itu. Responden pertama menghujahkan bahawa perayu tiada kepentingan sah secara langsung dalam rujukan tanah itu. Maka rayuan ini.

Diputuskan, membenarkan rayuan:

(1) (oleh **Low Hop Bing HMR**) Menurut s 2 APT, perayu mempunyai kepentingan secara langsung, berhubung jumlah pampasan yang perlu dibayar berkaitan beberapa bidang tanah yang diperoleh menurut APT

untuk pembinaan Lebuhraya tersebut. Pembinaan Lebuhraya tersebut adalah kemudahan awam dan seterusnya dalam rujukan tanah, ia terangkum di bawah s 37 APT berkaitan tanah-tanah tersebut. Perayu mempunyai kepentingan untuk membuat permohonan ke mahkamah dan untuk membantah jumlah pampasan di bawah s 37(1)(b) APT (lihat perenggan 25).

(2) (oleh **Low Hop Bing HMR** dan **Abdul Malik Ishak HMR** Perayu adalah, pada hakikatnya, seorang 'person interested' terhadap pampasan yang perlu dibayar kepada responden pertama menurut s 2 APT dan A 15 k 6(2)(b) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). Oleh itu, perayu sewajarnya dimasukkan sebagai satu pihak dalam prosiding rujukan tanah tersebut (lihat perenggan 33 & 37).

(3) (oleh **Abdul Malik Ishak HMR** LLM telah memperoleh tanah yang dijadualkan bagi tujuan lebuhraya awam tanpa Kerajaan Persekutuan membelanjakan wangnya sendiri. LLM sebagai wakil Kerajaan Persekutuan tidak mempertikaikan kewujudan perjanjian penswastaan itu mahupun mempertikaikan tanggungjawab perayu membayar pampasan kepada responden pertama. LLM hanya merupakan saluran untuk bayaran pampasan yang perlu dibayar oleh perayu dan bahawa kepentingan sah perayu adalah kepentingan secara langsung yang timbul daripada tanggungjawab sah sebenarnya di bawah perjanjian penswastaan itu meskipun terdapat s 22 Akta 1980 (lihat perenggan 55 & 56).

(4) (oleh **Abdul Malik Ishak HMR** Bahagian-bahagian perjanjian penswastaan yang dikemukakan oleh perayu dengan persetujuan Kementerian Kerja Raya kepada mahkamah melalui afidavit-afidavit mengandungi beberapa fasal spesifik tentang tanggungjawab perayu berkaitan pemerolehan tanah dan/atau membayar pampasan sewajarnya. Meskipun perayu dihalang daripada mengemukakan perjanjian penswastaan itu secara keseluruhannya oleh sebab faktor-faktor yang tidak berkaitan di luar kawalannya, terdapat material yang mencukupi di hadapan mahkamah untuk membolehkannya melaksanakan kuasanya di bawah A 15 k 6(2)(b) KMT (lihat perenggan 61e & f).

(5) (oleh **KN Segara HMR**, menentang) Perayu telah gagal untuk mengenalpasti kapasiti yang diniatkannya untuk mencelah. Permohonan yang betul adalah agar pencelah yang dicadangkan itu ditambah sebagai 'co-defendan' dan bukan sebagai 'intervener'. Walau bagaimanapun, responden kedua di bawah peruntukan-peruntukan APT tidak boleh menambah perayu sebagai defendan bersama dalam suatu rujukan kepada mahkamah. Prosiding pencelah oleh itu amat tidak sesuai dalam suatu rujukan kepada mahkamah oleh responden kedua (lihat perenggan 71 & 72).

(6) (oleh **KN Segara HMR**, menentang) Tanggungjawab untuk membayar yang dimaksudkan oleh perayu tidak relevan terhadap skop siasatan yang terbatas di bawah s 44 APT. Ia telah dipertikaikan bahawa LLM bertanggungjawab dari segi undang-undang dan statut untuk membayar jumlah pampasan itu di bawah s 22 Akta 1980. Oleh itu, pemohonan untuk mencelah oleh perayu dalam rujukan kepada mahkamah oleh responden kedua menurut peruntukan-peruntukan APT adalah tanpa merit dan tidak boleh dikekalkan (lihat perenggan 74 & 76).

(7) (oleh **KN Segara HMR**, menentang) Tambahan, isu dalam rujukan itu bukan tentang pihak mana yang bertanggungjawab untuk bayaran jumlah pampasan kepada responden pertama tetapi tentang persoalan kuantum jumlah pampasan yang diawardkan kepada responden pertama oleh responden kedua (lihat perenggan 76).]

Notes

For cases on compensation, see 8 *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1843–1875.

Cases referred to

Aik Ming (M) Sdn Bhd & Ors v Chang Chuen & Ors and another appeal [1995] 2 MLJ 770, CA (refd)

Ang Tun Cheong v Lim Yeok Beng (Public Bank, Intervenor) [2002] 6 MLJ 198, HC (refd)

Arab Malaysian Merchant Bank v Jamaludin bin Mohd Jarjis [1991] 2 MLJ 27, SC (refd)

Boston Deep Sea Fishing and Ice Company v Ansell (1888) 39 Ch D 339, CA (refd)

Byrne v Brown (1889) 22 QBD 657, CA (refd)

Chan Kern Miang v Kea Resources Pte Ltd [1999] 1 SLR 145, CA (refd)

Chan Min Swee v Melawangi Sdn Bhd [2000] 4 AMR 3855, HC (refd)

Chinery v Viall (1860) 5 H & N 288 (refd)

Damon Compania Naviera SA v Hapag-Lloyd International SA [1985] 1 WLR 435, CA (refd)

Datuk Bandar Kuching Utara v Kuching Plaza Sdn Bhd & Ors [2001] 2 MLJ 10, HC (refd)

Dies & Anor v British and International Mining and Finance Corporation Ltd [1939] 1 KB 724, KBD (refd)

Dr GH Grant (In all the Appeals) v The State of Bihar (In all the Appeals) AIR 1966 SC 237 (V 53 C 52) (refd)

Eh Riyid v Eh Tek [1976] 1 MLJ 262, FC (refd)
EON Bank Bhd v Pung Chong Thai [2001] 5 MLJ 409, HC (refd)
Gurtner v Circuit [1968] 1 All ER 328, CA (refd)
Hee Awa & Ors v Syed Muhammad Sazalay & Anor [1988] 1 MLJ 300, SC (refd)
Himalayan Tiles v FV Coutinho AIR 1980 SC 1118 (refd)
Hinton v Sparkes [1867–68] LR 3 CP 161 (refd)
Hongkong & Shanghai Banking Corp, The v Hj Salam bin Hj Daud (Mohd Azni bin Sudin, Auction Purchaser; RHB Bank Bhd, Intervenor) [2002] 3 MLJ 483, HC (refd)
Howe v Smith (1884) 27 Ch D 89, CA (refd)
Hyundai Heavy Industries Co Ltd (formerly Hyundai Shipbuilding and Heavy Industries Co Ltd) v Papadopoulos & Ors [1980] 1 WLR 1129, HL (refd)
Ideal Films Ltd v Richards & Ors [1927] 1 KB 374, CA (refd)
In Re IG Farbenindustrie AG Agreement [1944] Ch 41, CA (refd)
JC Galstaun, Objector v Secretary of State for India In Council & Ors (1905–1906) 10 CWN 195 (refd)
Krishna Das Roy v The Land Acquisition Collector of Pabna (1911–12) 16 CWN 327 (refd)
KS Banerjee v Jatindra Nath Paul and others AIR 1928 Calcutta 475 (refd)
Kuala Lumpur Finance Bhd v Azmi & Co Sdn Bhd dan satu lagi [1996] 4 MLJ 650, HC (refd)
Lau Song Seng & Ors v PP [1998] 1 SLR 663, CA (refd)
Lee Meow Lim v Lee Meow Nyin t/a Cheong Fatt Merchant (Nabisco Brands (M) Sdn Bhd, Intervener) [1990] 3 MLJ 123, HC (refd)
Leslie Shipping Company v Welstead (The Raithwaite) [1921] 3 KB 420, KBD (refd)
Oppenheimer v Minister of Transport [1941] 3 All ER 485, DC (refd)
Pegang Mining Ltd v Choong Sam & Ors [1969] 2 MLJ 52, PC (refd)
PP v Guan Sheng Trading Sdn Bhd [1997] 4 MLJ 20, HC (refd)
Macaura v Nothern Assurance Co Ltd & Ors [1925] AC 619, HL (refd)
Maclean v Dunn and Watkins, who survived Austin [1828] WL 2863 (CCP); [1828] 4 Bing, NC 722; 130 ER 947 (refd)
Magasu Sundram T Magasu & Ors v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2003] 2 CLJ 422, HC (refd)
Majlis Agama Islam Selangor v Bong Boon Chuen & Ors [2008] 6 MLJ 488; [2008] 6 AMR 449, CA (refd)
Malite Sdn Bhd v Abdul Karim bin Gendut & Ors [1981] 2 MLJ 29, FC (refd)
Martin v London Chatham and Dover Railway Company (1865–66) 1 Ch App 501 (refd)
McDonald & Anor v Dennys Lascelles Ltd (1933) 48 CLR 457 (refd)
Mehar Bassa v Collector of Lahore [1901] 2 PLR No 184 (refd)
Menteri Besar Negeri Sembilan (Pemerbadanan) v Pentadbir Tanah Daerah Seremban [1995] 3 MLJ 710, CA (refd)
Montgomerry v Foy (1895) 2 QBD 321 (refd)

Moriarty v Regent's Garage and Engineering Co Ltd [1921] 1 KB 423, DC (refd)
Moser v Marsden [1892] 1 Ch 487, CA (refd)
Mt Gangi v Santu and others AIR 1929 Lahore 736 (refd)
Munusamy v PP [1987] 1 MLJ 492, SC (refd)
Nite Beauty Industries Sdn Bhd & Anor v Bayer (M) Sdn Bhd [2000] 3 MLJ 314, HC (refd)
Rajoo a/l Selvappan & Ors v Abdul Bhari s/o Kader Ibrahim & Ors [2005] 6 MLJ 444, HC (refd)
Rover International Ltd & Ors v Cannon Film Sales Ltd [1989] 1 WLR 912, CA (refd)
R v Rent Officer Service Ex P Mouldoon [1996] 1 WLR 1103, HL (refd)
Sanders Lead Co Inc v Entores Metal Brokers Ltd [1984] 1 WLR 452, CA (refd)
Shell Malaysia Trading Sdn Bhd v Leong Yuet Yeng & Ors [1990] 3 MLJ 254, HC (refd)
Sri Permata Sdn Bhd v PPH Realty Sdn Bhd [2002] 1 MLJ 552, HC (refd)
Stein, Forbes & Co v County Tailoring Co (1916) 86 LJKB 448 (refd)
Stocznia Gdanska SA v Latvian Shipping Co, Latreefers Inc & Ors [1996] 2 Lloyd's Rep 132, CA (refd)
Sunderlal v Paramsuladas AIR 1968 SC 306 (refd)
Swarnamanjuri Dassi v Secy of State AIR 1928 Calcutta 522 (refd)
Tai Choi Yu v Syarikat Tingan Lumber Sdn Bhd [1998] 4 MLJ 275, CA (refd)
Tajjul Ariffin bin Mustafa v Heng Cheng Hong [1993] 2 MLJ 143, SC (refd)
Taylor v Laird (1856) 25 LJ Ex 329; [1856] 1 H & N 266 (refd)
Tohtonku Sdn Bhd v Superace (M) Sdn Bhd [1992] 2 MLJ 63, SC (refd)
Tohtonku Sdn Bhd v Superace (M) Sdn Bhd [1989] 2 MLJ 298, HC (refd)
United Malacca Rubber Estates Bhd v Pentadbir Tanah Daerah Johor Bahru & Anor [1997] 4 MLJ 1, HC (refd)
Universiti Malaya & Anor v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2003] 3 MLJ 185, HC (refd)
Van Gelder v Sowerby Bridge Society (1890) 44 Ch D 374 (refd)

Legislation referred to

Contracts Act 1950 s 10(1)
Evidence Act 1950 s 114(g)
Highway Authority Malaysia (Incorporation) Act 1980 s 22
Interpretation Acts 1948 and 1967 s 17A
Land Acquisition Act 1960 ss 2, 3, 4, 8, 10, 11, 12, 14, 16, 19, 20, 22, 36(1),(2), 37, 38, 38(1), (5), 43, 43(b), 44, 44(1), Forms G, H, N, P
Rules of the High Court 1980 O 15 rr 4, 6, 6(2), 2(b)(i), (ii)

Appeal from: Suit Application No S3–15–03 of 2001 (High Court, Kuala Lumpur)

Rajashree Suppiah (Paramjit Singh with him) (Simon Hue & Associates) for the appellant.
Joy Appukuttan (SK Yeoh & Partners) for the first respondent.
Abdul Karim Abdul Rahman (Deputy Public Prosecutor, Attorney General's Chambers) for the second respondent.

Low Hop Bing JCA (delivering majority judgement):

APPEAL

[1] On 16 July 2008, by a majority decision (Nihrumala Segara a/l MK Pillay JCA, dissenting) we allowed the appeal by the appellant Sistem Penyuraian Trafik KL Barat Sdn Bhd ('SPRINT') against the decision of the learned High Court judge who had dismissed the appellant's application for leave to intervene in a land reference in which the first respondent, Kenny Heights Development Sdn Bhd ('Kenny Heights'), had objected to the quantum of compensation awarded by the second respondent, the land administrator of the Federal Territory ('the land administrator') for compulsory acquisition of Kenny Heights' lands.

[2] Having granted SPRINT leave to intervene, I now give my grounds.

FACTUAL BACKGROUND

[3] Kenny Heights' lands were acquired on 17 February 2000 by the land administrator for the purpose of building the public highway known as SPRINT Highway ('the Highway').

[4] SPRINT's affidavit in support refers to and annexes the relevant portions of the privatisation agreement entered into on 23 October 1997 between SPRINT and the Federal Government ('the privatisation agreement') appointing SPRINT as the concessionaire of the highway.

[5] Pursuant to the privatisation agreement, SPRINT has to bear the compensation. The compensation payable by SPRINT was also known to Kenny Heights from the outset.

[6] Being dissatisfied with the quantum of compensation, Kenny Heights proceeded to the High Court by way of land reference.

[7] In the land reference, SPRINT applied for leave to intervene and to

lodge Form N under the Land Acquisition Act 1960. (a reference hereinafter to a s is a reference to that section in the Land Acquisition Act 1960 ('the Act'), unless otherwise stated).

[8] The learned judge of the High Court had dismissed SPRINT's application for leave to intervene.

[9] In refusing leave to intervene, the court below:

(1) questioned the very existence and validity of the privatisation agreement and the functions of the Highway Authority Malaysia, Lembaga Lebuhraya Malaysia ('LLM') under the Highway Authority Malaysia (Incorporation) Act 1980;

(2) drew an adverse inference against SPRINT for not producing the entire privatisation agreement; and

(3) declined to accept SPRINT's obligations to pay the compensation pursuant to the privatisation agreement.

[10] At the hearing of the appeal before us, learned senior federal counsel, Dato' Abdul Karim bin Abdul Rahman, representing the land administrator did not resist the appeal by SPRINT. However, Kenny Heights objected vehemently.

LEGAL INTEREST

[11] In submitting that SPRINT has no direct legal interest in the land reference and that the learned judge of the High Court is correct in dismissing SPRINT's application for leave to intervene in the land reference, Kenny Heights' learned counsel Mr Joy W Appukuttan relied on, inter alia:

(1) *Pegang Mining Ltd v Choong Sam & Ors* [1969] 2 MLJ 52 (PC);

(2) *Tohtonku Sdn Bhd v Superace (M) Sdn Bhd* [1992] 2 MLJ 63 (SC);

(3) ss 2 and 37;

(4) *Universiti Malaya & Anor v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 3 MLJ 185 (HC);

(5) *Sri Permata Sdn Bhd v PPH Realty Sdn Bhd* [2002] 1 MLJ 552 (HC);

(6) *Tai Choi Yu v Syarikat Tingan Lumber Sdn Bhd* [1998] 4 MLJ 275 (CA);

(7) *Menteri Besar Negeri Sembilan (Pemerbadanan) v Pentadbir Tanah Daerah Seremban* [1995] 3 MLJ 710 (CA); and

(8) *United Malacca Rubber Estates Bhd v Pentadbir Tanah Daerah Johor Bahru & Anor* [1997] 4 MLJ 1 (HC).

[12] SPRINT's learned counsel, Ms Rajashree Suppiah assisted by Mr Paramjit Singh contended that being the concessionaire of the LLM, SPRINT has a direct legal interest in the compensation for the lands acquired and should be granted leave to intervene and lodge Form N in the land reference. They cited:

(1) O 15 r 6(2)(b)(i) and (ii) of the Rules of the High Court 1980;

(2) ss 2 and 37;

(3) *Magasu Sundram T Magasu & Ors v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 2 CLJ 422 (HC); and

(4) *Arab Malaysian Merchant Bank v Jamaludin bin Mohd Jarjis* [1991] 2 MLJ 27 (SC).

[13] In my judgment, a person may be added as a party pursuant to O 15 r 6(2)(b)(i) or (ii), as expressly provided in the following words:

> 6 Misjoinder and non-joinder of parties (O 15 r 6)
>
> (1) ...
>
> (2) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application —
>
> (a) ...
>
> (b) order any of the following persons to be added as a party, namely:
>
> (i) any person who ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or
>
> (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter;
>
> but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorized.

[14] In *Rajoo a/l Selvappan & Ors v Abdul Bhari s/o Kader Ibrahim & Ors* [2005] 6 MLJ 444, at p 449, in considering O 15 r 6(2) in the High Court, I took the liberty to set out the relevant general principles that have been enunciated by the courts as follows:

(1) O 15 r 6(2) confers upon the court a wide discretion to make an order thereunder so that all matters in dispute can be effectively and completely determined and adjudicated upon: *Kuala Lumpur Finance Bhd lwn Azmi & Co Sdn Bhd dan satu lagi* [1996] 4 MLJ 650; and Malaysian High Court Practice (2002 Desk Edition, MLJ) p 367 para 15.6.1;

(2) An application under O 15 r 6(2) may be made at any stage of the proceedings but before final judgment: *Shell Malaysia Trading Sdn Bhd v Leong Yuet Yeng & Ors* [1990] 3 MLJ 254; *Tai Choi Yu*; *Nite Beauty Industries Sdn Bhd & Anor v Bayer (M) Sdn Bhd* [2000] 3 MLJ 314; and Malaysian High Court Practice, p 367 para 15.6.2.

(3) There is no requirement to obtain the consent of the party intended to be added as a defendant before adding him: *Datuk Bandar Kuching Utara v Kuching Plaza Sdn Bhd & Ors* [2001] 2 MLJ 10, at p 15; and Malaysian High Court Practice, pp 370–390 para 15.6.9; and

(4) Often the court will make such changes as may be necessary to enable all matters in dispute to be effectually and completely determined and adjudicated upon: *Van Gelder v Sowerby Bridge Society* (1890) 44 Ch D 374; *Montgomerry v Foy* (1895) 2 QBD 321; *Ideal Films Ltd v Richards & Ors* [1927] 1 KB 374; *Malite Sdn Bhd*; and Malaysian High Court Practice, p 367 para 15.6.3.

[15] With particular reference to O 15 r 6(2)(b)(i) or (ii), the test for the grant or refusal of leave to intervene is whether a person's 'legal interest', and not merely his commercial interest, would be affected. The question is: will a person's rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by an order which may be made in the action? (See *Pegang Mining Co Ltd* at p 56 per Lord Diplock; and *Tohtonku Sdn Bhd*, at p 65, per Mohamed Yusoff SCJ (as he then was)).

[16] In *Gurtner v Circuit* [1968] 1 All ER 328, the English Court of Appeal had widened the ambit to include any case in which the intervener is directly affected not only in his legal rights but in his pocket in that he will be bound to foot the bill. In such a case, the court in the exercise of discretion may allow him to be added as a party on such terms as it thinks fit. By so doing, the court achieves the object of the rule. It enables all matters to dispute to be effectually and completely determined and adjudicated upon between all those directly concerned in the outcome.

[17] In *Arab Malaysia Merchant Bank Berhad* the Supreme Court considered O 15 r 6(2)(b)(ii) in an application for leave to intervene. Gunn Chit Tuan SCJ (later CJ (M)) speaking for the court held at p 28 that this rule allows intervention where the proprietary or pecuniary rights of the intervener are directly affected by the proceedings or where the intervener may be rendered liable to satisfy any judgment either directly or indirectly.

[18] By the process of elimination:

(1) A person cannot be directly affected by an order of the court if such affection is brought about by an intermediary or the intervention of an intermediate agency: see *Sri Permata Sdn Bhd* per Abdull Hamid Embong J (now JCA), at p 558E–H, applying *Stroud's Judicial Dictionary of Words and Phrases* (6 Ed) and *R v Rent Officer Service Ex P Mouldoon* [1996] 1 WLR 1103 (HL) per Lord Keith of Kinkel;

(2) A mere shareholder, a fortiori, a minority shareholder, has no legal interest directly in the property of the company: *Tai Choi Yu* at p 278 D–E, H; and

(3) A statutory corporation established with the power to undertake ventures of a commercial or industrial nature was held by the High Court and the Court of Appeal not to be a person interested in the scheduled land under the Land Acquisition Act 1960, as the proposed acquisition was for a public purpose, thereby ruling out the involvement of the corporation on whose behalf the scheduled land was acquired by the state authority: *Menteri Besar Negeri Sembilan (Perbadanan)*

[19] However, in specific situations where compensation for the acquisition of land is to be paid by the party for whom the land was acquired, our courts have held that legal interest has certainly been established. By way of illustration:

(1) In *Universiti Malaya* LLM had filed Form N and objected to the amount of compensation awarded by the land administrator in relation to the acquisition of the lands owned by Universiti Malaya (UM). UM resisted the filing of Form N by LLM and applied to strike out or dismiss Form N on the ground that LLM was precluded or stopped from filing Form N under s 37, because LLM had failed to submit the valuation at the inquiry under s 12. Abdul Hamid Said J (as he then was) at p 191H, held, inter alia, that the acquisition of the land was for LLM and LLM had to pay for the same, in which case LLM definitely had a say in the finding of the land administrator. Hence, UM's application to strike out or dismiss Form N was refused. This judgment is supportive of SPRINT and militates against Kenny Heights;

(2) In *United Malacca Rubber Estates Ltd* the plaintiff's scheduled land was acquired by the state authority on behalf of United Engineering (M) Bhd (UEM), for the purposes of the second Malaysia-Singapore causeway project. The land administrator awarded compensation in the sum of RM123,688. UEM's objection to the compensation was referred to the court for determination. Meanwhile, the plaintiff filed an action in the High Court against the land administrator and UEM, praying for declarations, inter alia, that UEM had no standing and was not entitled to lodge the objection against the compensation. Payment for the costs of acquisition was to be made by UEM. In dismissing the plaintiff's action, Mohd Ghazali J (now JCA) rejected the plaintiff's contention that UEM was not a 'person interested'. Being a 'person interested', UEM certainly has the standing to object to the amount of compensation awarded.

[20] In *Magasu Sundram T Magasu Ors v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 2 CLJ 422, Azmel Maamor J (later FCJ) had to interpret the words 'person interested'. His Lordship applied two judgments of the Indian Supreme Court viz: *Sunderlal v Paramsuladas* AIR 1968 SC 306, where it was held that a person becomes a person interested if he claims an interest in the compensation to be awarded, and *Himalayan Tiles v FV Coutinho* AIR 1980 SC 1118 which held that the definition of the term is an inconclusive one and must be liberally construed to embrace all persons who may be directly or indirectly interested either in the title of the land or in the question of compensation. The conclusion is that a person can be said to be a person interested if he has an interest in the land either directly or indirectly or if has an interest in the compensation in respect of the land acquired.

[21] The ratio in *Magasu Sundram* is entirely consistent with the definition of a 'person interested' in s 2 as amended vide Act A999/97 which came into force on 1 March 1998. Section 2 has now made the position absolutely clear. Where relevant, it defines a 'person interested' as including 'every person claiming an interest in the compensation to be made on account of the acquisition of land under this Act'.

[22] Further s 37(1)(b) expressly provides for an interested person to make an objection to the land administrator's award of compensation, particularly on the amount thereof. It reads as follows:

> 37 Application to court.
>
> (1) Any person interested in any scheduled land who, pursuant to any notice under section 10 or 11, has made a claim to the land administrator in due time and who has not accepted the land administrator's award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to this section, make objection to:
>
> (a) ...;
>
> (b) the amount of the compensation;
>
> (c) ...; and
>
> (d) ...

[23] It is therefore abundantly clear that the intention expressed in s 37(1)(b) is to enable any person interested in any scheduled land to make an application to the court, objecting to the amount of the compensation.

[24] In my view, the expression 'person interested', used in relation to the lands which are the subject matter of acquisition under the Act, must be interpreted to promote the purpose or object of the Act ie to facilitate the acquisition of land, the assessment of compensation to be made on account of such acquisition and other matters incidental thereto, in line with the purposive interpretation housed in s 17A of the Interpretation Acts 1948 and 1967 which reads as follows:

> Regard to be had to the purpose of Act
>
> 17A In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

[25] Under s 2, SPRINT being the concessionaire in the privatisation agreement clearly has a direct legal interest in the amount of compensation payable in respect of the lands acquired pursuant to the Act for the purpose of the highway which is a public utility and consequently in the land reference brought under s 37 in respect of the lands. It has the standing to make an application to the court and to object to the amount of the compensation under s 37(1)(b).

[26] In the circumstances, learned judge's grounds of refusal enumerated above constituted serious misdirections warranting appellate interference.

CONCLUSION

[27] On the foregoing grounds, I allowed the appeal by the appellant, with costs here and in the court below; set aside the decision of the High Court; and granted leave to the appellant to intervene and to file Form N in the land reference. Deposit to be refunded to SPRINT (the appellant).

Abdul Malik Ishak JCA:

INTRODUCTION

[28] This was an appeal by the appellant — Sistem Penyuraian Trafik KL Barat Sdn Bhd (hereinafter referred to as 'SPRINT'), against the decision of the High Court judge who disallowed SPRINT's application to intervene in a land reference matter which arose upon the first respondent's — Kenny Heights Development Sdn Bhd (hereinafter referred to as 'Kenny Heights'), objection to the quantum of compensation awarded by the second respondent — Pentadbir Tanah Wilayah Persekutuan, Kuala Lumpur (hereinafter referred to as 'the land administrator'), for the compulsory acquisition of Kenny Heights' lands.

[29] By way of a privatisation agreement dated 23 October 1997 between SPRINT and the Federal Government, SPRINT was appointed as the concessionaire of the highway. This meant that SPRINT, by virtue of the privatisation agreement, bears the burden of paying the compensation arising out of the compulsory acquisition of Kenny Heights' lands. It must be borne in mind that Kenny Heights knew, from the outset, that the compensation has to be paid by SPRINT. Thus, it was not surprising that SPRINT sought to intervene as a party. Kenny Heights objected to SPRINT's application to intervene while the land administrator supported it.

ANALYSIS

[30] The High Court judge refused to recognise the privatisation agreement notwithstanding the fact that all the affidavits alluded to the existence of the privatisation agreement.

[31] Under cl 6.3.1 of the privatisation agreement, SPRINT was legally obliged to bear the costs of any land acquired for the purposes of the

construction of the highway project and thus SPRINT can be said to be a person interested in the compensation payable upon such acquisition. A

[32] As a concessionaire under the privatisation agreement, SPRINT has a direct legal interest in the matter of the compensation payable to Kenny Heights as a result of the acquisition of Kenny Heights' lands and should be granted leave to intervene and be allowed to lodge the necessary Form 'N' under the Land Acquisition Act 1960 in the land reference. B

[33] SPRINT was, in fact, a 'person interested' in the compensation payable to Kenny Heights. Section 2 of the Land Acquisition Act 1960 defines a 'person interested' to include: C

> every person claiming an interest in compensation to be made on account of the acquisition of land under this Act, but does not include a tenant... at will.

D

[34] It is my considered view, based on the authorities, that this definition is not intended to be exhaustive. Any person claiming an interest in compensation does not mean that the claim must be a valid claim. It is the duty of the land administrator to scrutinise at every claim and in the event he is uncertain whether the claim is valid or otherwise he may by virtue of s 36(2) of the Land Acquisition Act 1960 refer the matter to the High Court for its determination. E

[35] It is appropriate, at this juncture, to itemise the different categories of persons interested under the Land Acquisition Act 1960. I shall do so now: F

(a) A company, whether corporate or incorporate, could be a person interested in accordance with the meaning ascribed to the word 'person' in the Interpretation Acts 1948 and 1967 — Consolidated and Revised 1989, Reprint 2000. G

(b) According to the case of *Krishna Das Roy v The Land Acquisition Collector of Pabna* (1911–12) 16 CWN 327, an owner of the subject land is a person interested. The same recognition is also given to a mortgagee (*Martin v London Chatham And Dover Railway Company* [1865-66] 1 Ch App 501). And a lessee with a fixed term is also said to be a person interested (*Mehar Bassa v Collector of Lahore* [1901] 2 PLR No 184; and *Swarnamanjuri Dassi v Secy of State* AIR 1928 Calcutta 522). So too would a reversioner be accorded the same status (*Mt Gangi v Santu and others* AIR 1929 Lahore 736). H I

(c) A person who has entered into a contract to purchase a piece of land which is a subject of compulsory acquisition is a person interested because he is said to be the beneficial owner (*JC Galstaun, Objector v Secretary of State for India In Council & Ors* (1905–1906)10 CWN

195). Likewise, the other party to the contract is also considered as a person interested (*Dr GH Grant (In all the Appeals) v The State of Bihar (In all the Appeals)* AIR 1966 SC 237 (V 53 C 52)).

(d) According to *Oppenheimer v Minister of Transport* [1941] 3 All ER 485, an option holder has an interest in the land and that makes him a person interested.

(e) According to *KS Banerjee v Jatindra Nath Paul and others* AIR 1928 Calcutta 475, where a trust proper has been acquired by the government, those persons having legal and equitable interests in the acquired property are classified as persons interested.

[36] These are some of the personalities that can be said to be persons interested under the Land Acquisition Act 1960 and the list is not exhaustive nor is it closed. SPRINT would definitely fall in the category of a 'person interested' within the meaning of the Land Acquisition Act 1960.

[37] According to O 15 r 6(2) of the Rules of the High Court 1980 ('RHC'), there is no time limit for SPRINT to intervene but the authorities which I will allude to in due course would show otherwise. However, one thing is certain. It is this. That under O 15 r 6(2)(b) of the RHC, SPRINT as a 'person interested' should rightly be added as a party in the land reference proceedings.

[38] Order 15 r 6(2)(b) of the RHC states as follows:

> 6 Misjoinder and non-joinder of parties (O 15 r 6)
>
> (2) At any stage of the proceedings in any cause or matter the court may on such terms as it thinks just and either of its own motion or on application —
>
> (b) order any of the following persons to be added as a party, namely —
>
> (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or
>
> (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter; but no person

shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorized. A

[39] It is quite obvious that the main object of O 15 6(2) of the RHC is to prevent a multiplicity of proceedings. This court is vested with a wide discretion to make an order so that all matters in dispute can be effectually and completely determined and adjudicated upon (*Kuala Lumpur Finance Bhd v Azmi Co Sdn Bhd dan satu lagi* [1996] 4 MLJ 650). B

[40] In the context of an intervention in a judicial review proceeding, I had this to say in *Majlis Agama Islam Selangor v Bong Boon Chuen & Ors* [2008] 6 MLJ 488 at p 515, [2008] 6 AMR 449 at p 473: C

[91] The court has a broader and wider discretion to allow intervention under Order 15 r 6(2)(b)(ii) of the RHC. It is comforting to know that there is such a provision in the RHC. It makes sense to have such an enabling provision because sometimes a joinder of a person may not be strictly necessary but it may be convenient and must therefore be just to allow such a joinder. D

[92] The need for more flexibility is shown in the case of *Vandervell Trustees Ltd v White & Ors* [1971] AC 912 (HL). That case concerned a dispute between trustees and executors in respect of the ownership of certain trust assets. The Inland Revenue was concerned in the matter because it had made a tax assessment concerning the trust assets which was related to the issue of their ownership. Allowing the joinder of the Inland Revenue, Lord Reid had this to say at pp 929–930: E F

> I find this so strange as to be inexplicable if it is not competent to make a of court bringing in the revenue and so preventing the same issue from being raised again before the special commissioners. G

[93] Buckley J in *Tetra Molectric Ltd v Japan Imports Ltd* [1976] RPC 541 had this to say in regard to para (b)(ii) of r 6(2) of Order 15 of the RSC: H

> it widens the discretion of the court to a great extent, for now the court may add any person … if the question or issue involved is one which in the opinion of the court it would be just and convenient to determine as between the applicant and the present party … as well as between the parties to the proceedings themselves. I

[94] So long as it is 'just and convenient', and it is so in this appeal, it would be appropriate to add MAIS as a party to the judicial review proceedings.

[41] The court retains a discretionary power to refuse an application to intervene. In *Chan Kern Miang v Kea Resources Pte Ltd* [1999] 1 SLR 145 (CA), for instance, the court refused the application of the defendant to add another party as a defendant because that party had been sued separately by the plaintiff previously and a settlement agreement had been reached in that case which barred the plaintiff from claiming any further reliefs from that party.

[42] In an action for breach of contract and misrepresentation where the plaintiff had already assigned his rights under the contract to a bank, I had while sitting on the High Court bench in *Chan Min Swee v Melawangi Sdn Bhd* [2000] 4 AMR 3855, ordered a stay of the proceedings to allow the plaintiff to include the assignee bank as a party to the action simply because both the plaintiff and the bank had rights in the chose in action via the assignment and I too held that the court would not be in a position to decide the issue in the absence of the bank as any decision on the issue would not bind the bank. Here, we have exercised, by way of majority, our discretion by allowing SPRINT to intervene.

[43] The case of *Hee Awa & Ors v Syed Muhammad Sazalay & Anor* [1988] 1 MLJ 300 accepted the test laid down by the case of *Pegang Mining Co Ltd v Choong Sam & Ors* [1969] 2 MLJ 52 (PC). in determining whether a person ought to be added as a party to the action. And the test is as follows (see p 56 of *Pegang Mining*):

> will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in the action?

[44] Here, the rights of SPRINT under the privatisation agreement to pay Kenny Heights for the acquisition of Kenny Heights' lands would directly be affected if SPRINT was not allowed to intervene.

[45] Having considered the relevant authorities, I am of the opinion that the following propositions may be taken as well settled.

[46] Firstly, that the phrase 'at any stage of the proceedings' appearing in O 15 r 6(2) of the RHC means at any stage before the final order is made and not after it has been perfected and extracted (*Hongkong & Shanghai Banking Corp, The v Hj Salam bin Hj Daud (Mohd Azni bin Sudin, Auction Purchaser; RHB Bank Bhd, Intervenor)* [2002] 3 MLJ 483).

[47] Secondly, the court has all along been magnanimous in allowing an applicant who has an interest in the subject matter the right to intervene even

after final judgment has been entered (*EON Bank Bhd v Pung Chong Thai* [2001] 5 MLJ 409 and *Ang Tun Cheong v Lim Yeok Beng (Public Bank, Intervenor)* [2002] 6 MLJ 198).

[48] Thirdly, if the addition of new parties may cause fresh expense and necessitates new evidence, the court would still entertain such an application (*Byrne v Brown* (1889) 22 QBD 657 (CA) so that all matters in dispute may be effectually and completely determined and adjudicated upon (*Van Gelder, Apsimon & Co v Sowerby Bridge United District Flour Society* (1890) 44 Ch D 374 (CA); *Montgomery v Foy, Morgan & Co* [1895] 2 QB 321 (CA); and *Ideal Films Ltd v Richards & Ors* [1927] 1 KB 374 (CA).

[49] Fourthly, for intervention to be legitimate it must fulfill the conditions prescribed by O 15 r 6(2)(b)(i) or (ii) of the RHC.

[50] Fifthly, the Privy Council in *Pegang Mining Co Ltd v Choong Sam & Ors* demonstrates the wide powers of the court in dealing with an application to intervene, like the one before us now. There, Lord Diplock at p 55 aptly said:

> The cases illustrate the great variety of circumstances in which it may be sought to join an additional party to an existing action. In Their Lordships' view one of the principal objects of the rule is to enable the court to prevent injustice being done to a person whose rights will be affected by its judgment by proceeding to adjudicate upon the matter in dispute in the action without his being given an opportunity of being heard. To achieve this object calls for a flexibility of approach which makes it undesirable in the present case, in which the facts are unique, to attempt to lay down any general proposition which could be applicable to all cases.

[51] Sixthly, our Supreme Court dutifully followed *Pegang Mining* in *Arab Malaysian Merchant Bank Bhd v Jamaludin bin Dato Mohd Jarjis* [1991] 2 MLJ 27 and held that there must be a flexibility of approach in construing O 15 r 6(2)(b)(i) or (ii) of the RHC.

[52] Seventhly, a party may be added if his legal interest will be affected by the judgment in the action but he will not be added as a party when his commercial interest only would be affected (*Moser v Marsden* [1892] 1 Ch 487; *In Re IG Farbenindustrie AG Agreement* [1944] Ch 41; *Sanders Lead Co Inc v Entores Metal Brokers Ltd* [1984] 1 WLR 452 (CA); *Tohtonku Sdn Bhd v Superace (M) Sdn Bhd* [1989] 2 MLJ 298; *Lee Meow Lim v Lee Meow Nyin t/a Cheong Fatt Merchant (Nabisco Brands (M) Sdn Bhd, Intervener)* [1990] 3 MLJ 123; and *Eh Riyid v Eh Tek* [1976] 1 MLJ 262).

[53] Eightly, that a mere shareholder, a fortiori, a minority shareholder has

no interest, legal or equitable, in the property of a company and has no right to intervene (*Macaura v Nothern Assurance Co Ltd & Ors* [1925] AC 619 (HL) at p 626).

[54] Ninthly, the objects of O 15 r 6(2)(b) of the RHC may be stated as follows:

(i) to prevent multiplicity of actions and to enable the court to determine disputes between all parties to them in one action (*Malite Sdn Bhd v Abdul Karim bin Gendut & Ors* [1981] 2 MLJ 29); and

(ii) to prevent the same or substantially the same questions or issues being tried twice with possibly different results (*Tajjul Ariffin bin Mustafa v Heng Cheng Hong* [1993] 2 MLJ 143).

[55] Reverting back to the factual matrix of the case, I must categorically say that the High Court judge misdirected himself when he questioned the validity of the privatisation agreement notwithstanding the fact that the existence of that agreement completes the whole picture on how the highway authority ('LLM') under the Highway Authority Malaysia (Incorporation) Act 1980 acquires the scheduled land for the purposes of the public highway without the Federal Government expending its own fund.

[56] LLM as the representative of the Federal Government did not dispute the existence of the privatisation agreement nor did it dispute SPRINT's obligation to pay the compensation to Kenny Heights. All these have amply been set out in the additional affidavit of Md. Sani bin Dawam that was affirmed on 3 August 2001. His additional affidavit confirmed that LLM was merely a conduit for the payment of the compensation which was payable by SPRINT and that the legal interest of SPRINT was a direct interest arising from its actual legal obligation under the privatisation agreement notwithstanding s 22 of the Highway Authority Malaysia (Incorporation) Act 1980.

[57] Obligations under the privatisation agreement cannot be ignored. They constitute a contract where the obligations are capable of being enforced or recognised under the law. They are based on the agreement of the contracting parties. Section 10(1) of the Contracts Act 1950 enacts as follows:

What agreements are contracts

10

(1) All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

[58] A contract is nothing more than an instrument by which the separate and conflicting interests of the parties have been reconciled and brought to a common goal. It sets out the respective responsibilities of the parties and the standard of performance to be expected of the parties. It allows the economic risks involved in the transaction to be identified in advance between the parties. And it may also provide for contingencies, for example, what is to happen if things go wrong. In other words, the purpose of a contract is to facilitate forward planning of the transaction and to make the necessary provision for future contingencies (*Stein, Forbes & Co v County Tailoring Co* (1916) 86 LJKB 448; *Maclean v Dunn and Watkins, who survived Austin* (1828) WL 2863 (CCP) [1828] 4 Bing, NC 722; 130 ER 947; *Howe v Smith* (1884) 27 Ch D 89 (CA); *Leslie Shipping Company v Welstead (The Raithwaite)* [1921] 3 KB 420; *Hyundai Heavy Industries Co Ltd (formerly Hyundai Shipbuilding and Heavy Industries Co Ltd) v Papadopoulos & Ors* [1980] 1 WLR 1129 (HL); *Stocznia Gdanska SA v Latvian Shipping Co, Latreefers Inc & Ors* [1996] 2 Lloyd's Rep 132 (CA); *Dies & Anor v British and International Mining and Finance Corporation, Ltd* [1939] 1 KB 724; *McDonald & Anor v Dennys Lascelles Ltd* (1933) 48 CLR 457 at p 477; *Chinery v Viall* (1860) 5 H & N 288; *Hinton v Sparkes* (1867–68) 3 LRCP 161 at p 166; *Damon Compania Naviera SA v Hapag-Lloyd International SA* [1985] 1 WLR 435 (CA), at p 451; *Rover International Ltd & Ors v Cannon Film Sales Ltd* [1989] 1 WLR 912 (CA), at p 924; *Taylor v Laird* (1856) 25 LJ Ex 329, [1856] 1 H & N 266; *Boston Deep Sea Fishing and Ice Company v Ansell* (1888) 39 Ch D 339 (CA); and *Moriarty v Regent's Garage And Engineering Co Ltd* [1921] 1 KB 423).

[59] Seen in this context, the privatisation agreement must be adhered to and we, accordingly, by way of majority, give effect to it.

[60] Next, the High Court judge erred in law and in fact when he drew an adverse inference against SPRINT for failing to produce the privatisation agreement in its entirety. Illustration (g) to s 114 of the Evidence Act 1950 states that the court may presume that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it. But, the illustration is not mandatory. It depends on the circumstances of the case, and, in a criminal case, for instance, the materiality of the witnesses not produced may activate the adverse inference rule (*Lau Song Seng & Ors v Public Prosecutor* [1998] 1 SLR 663 (CA); *Munusamy v Public Prosecutor* [1987] 1 MLJ 492 (SC)). While sitting on the High Court bench in the case of *Public Prosecutor v Guan Sheng Trading Sdn Bhd* [1997] 4 MLJ 20, I said that an adverse inference can only be drawn if there was withholding of evidence and not merely on account of failure to obtain evidence.

[61] Here, the High Court judge failed to give sufficient and/or any consideration to the following facts:

(a) that the privatisation agreement contained a confidentiality clause which prohibited the disclosure of the privatisation agreement and notwithstanding this prohibition, some parts of the privatisation agreement were produced as can be seen at pp 420–441 of the appeal record;

(b) that cl 33.1 of the privatisation agreement as seen at p 440 of the appeal record carried the confidentiality clause worded in this way:

> 33.1 Confidentiality
>
> This Agreement and all matters pertaining hereto shall be considered a confidential matter and shall not be disclosed to any third party without prior mutual agreement (which agreement shall not be unreasonably withheld) unless the same is required by law.

(c) that the letter from the Ministry of Works addressed to SPRINT dated 8 September 2003 spoke of the confidentiality in this way (see pp 346–347 of the appeal record):

> 2. Dimaklumkan bahawa memandangkan klausa 'confidentiality' dalam Perjanjian Penswastaan bertarikh 23hb. Oktober 1997 (seterusnya dikenali sebagai 'Perjanjian Penswastaan' tersebut) tidak membenarkan isi kandungan Perjanjian Penswastaan tersebut didedahkan (disclose) kepada mana-mana pihak, pihak kami hanya dapat mengesahkan bahawa Sistem Penyuraian Trafik KL Barat Sdn Bhd (seterusnya dikenali sebagai 'Syarikat Konsesi') telah diberikan konsesi oleh Kerajaan untuk mereka, membina dan menguruskan lebuhraya yang dikenali sebagai 'Lebuhraya SPRINT'.
>
> 3. Pihak kami juga mengesahkan bahawa di bawah terma Perjanjian Penswastaan tersebut, semua kos yang terlibat dalam pengambilanbalik tanah untuk Lebuhraya SPRINT adalah ditanggung sepenuhnya oleh Syarikat Konsesi.

(d) that SPRINT had in fact requested the permission of the Ministry of Works to disclose the relevant parts of the privatisation agreement as reflected in the letter dated 8 June 2004 from the Ministry of Works to SPRINT as seen at p 378 of the appeal record and that letter was worded in this way:

> Per: PERJANJIAN PENSWASTAAN BERTARIKH 23HB. OKTOBER 1997

MAHKAMAH TINGGI KUALA LUMPUR

NO: S3-15-03-01

Kenny Heights Development Sdn Bhd lwn. Pentadbir Tanah Wilayah Persekutuan

Dengan hormatnya saya merujuk kepada perkara di atas dan surat kami bertarikh 30 April 2004.

2. Permohonan tuan untuk mengemukakan klausa-klausa yang disebut itu iaitu:

1. Muka Surat depan
2. Kesemua recital A, B dan C
3. Klausa 1.1
4. Kesemua Klausa 2
5. Kesemua Klausa 6
6. Kesemua Klausa 27
7. Klausa 33.1
8. Muka surat tandatangan kedua-dua pihak

bagi tujuan kes Mahkamah berkenaan dibenarkan.

3. Walau bagaimanapun kebenaran ini diberi dengan syarat tuan hendaklah membuat akujanji untuk mempergunakannya hanya untuk kes tersebut di atas sahaja dan bukan untuk kegunaan lain-lain kes atau lain-lain perkara.

(e) that the parts of the privatisation agreement disclosed by SPRINT with the consent of Ministry of Works to the court by way of affidavits contained the specific clauses on SPRINT's obligation in respect of the land acquisitions and its obligation to bear the costs of such acquisitions and/or pay the necessary compensation and that there was therefore sufficient material before the court to enable it to exercise its powers under O 15 r 6(2)(b) of the RHC; and

(f) that the Ministry of Works had initially denied permission to SPRINT to disclose the privatisation agreement and had thereafter agreed to allow selected clauses of the privatisation agreement to be disclosed upon further requests by SPRINT and, consequently, SPRINT was constrained from producing the privatisation agreement in its entirety by extraneous factors beyond its control.

[62] For these varied reasons, we hold, by way of majority, that in all the circumstances, this was not a fit and proper case for adverse inference rule to be invoked against SPRINT.

CONCLUSION

[63] I have had the advantage of reading the judgment in draft of my learned brother Low Hop Bing JCA and I agree with what His Lordship has said. I too agree with all the orders made by His Lordship and I too make those orders which we have made, by way of majority, in open court.

KN Segara JCA (delivering dissenting judgment):

[64] A land reference proceedings was pending before the High Court Kuala Lumpur consequent upon the written application in Form N to the land administrator pursuant to s 38(1) of the Land Acquisition Act 1960 (LAA 1960) made by the registered owners of the scheduled land, Kenny Heights Development Sdn Bhd, objecting to the amount of compensation awarded by the land administrator. Sistem Penyuraian Trafik KL Barat Sdn Bhd applied under O 15 of the Rules of the High Court 1980 to intervene in the said land reference proceedings. The learned High Court judge dismissed the application by Sistem Penyuraian Trafik KL Barat Sdn Bhd.

[65] The LAA 1960 is a special Act relating to the acquisition of land, the assessment of compensation to be made on account of such acquisition and other matters incidental thereto. A reference to court under the provisions of the LAA 1960 can only be made by the land administrator. This is spelt out in unequivocal terms in s 36(1) of the LAA 1960. Section 37 of the said Act sets out that any person interested in any scheduled land who has made a claim to the land administrator in due time may make objections, subject to the provisions in the section, inter alia, to the amount of the compensation. The manner and time within which the objection is to be made is strictly governed by s 38 of the LAA 1960. It must be made by way of a written application in Form N to the land administrator requiring that he refer the matter to the court for its determination. Section 38 of the LAA 1960 is very comprehensive, setting out time frames for the reference to be made to the court and even covers the situation when the land administrator fails to make a reference to court within the period specified after an objection has been made. Section 43 of the LAA 1960 makes it mandatory for the court, upon receiving a reference from the land administrator pursuant to s 38(5), to cause a notice in Form P, specifying the date on which the court will proceed to

hear and determine the objection contained in such reference, to be served on the following:

(a) the applicant;

(b) the person or corporation, if any, on whose behalf the proceedings were instituted pursuant to s 3;

(c) all persons interested in the objection, except such, if any, as have consented without protest to receive payment of the compensation awarded; and if the objection is in regard to the area of the land or the amount of the compensation, the land administrator;

(d) if the objection is in regard to the area of the land or the amount of the compensation, the land administrator.

[66] It cannot be over-emphasised that the scope of an inquiry by the court in a reference under the LAA 1960 is very much limited to a consideration only of the interests of the persons affected by the objection. This is abundantly clear from s 44(1) which reads:

(1) In every proceeding under this Part the scope of the inquiry shall be restricted to a consideration of the interests of the persons affected by the objection.

[67] In this appeal, the first respondent, Kenny Heights Development Sdn Bhd (hereinafter referred to as 'Kenny Heights') is the registered owner of that parcels of land held under title particulars Grant 5357 Lot No 21759, Grant 5358 Lot No 21760, Grant 5359 Lot No 21761, Grant 5360 Lot No 21762 and Grant 5361 Lot No 21763 all in Mukim Batu Daerah Wilayah Persekutuan (collectively referred to as 'land').

[68] The second respondent (hereinafter referred to as 'land administrator') acquired part of Kenny Heights' land (hereinafter referred to as the 'affected land') under the provisions of the LAA 1960 for and on behalf of the Lembaga Lebuhraya Malaysia (Highway Authority Malaysia) (hereinafter referred to as 'LLM').

[69] The land administrator awarded Kenny Heights the sum of RM21,553,003.84 ('compensation sum') through Forms G and H, dated 19 June 2000 and 21 June 2000 respectively, for the acquisition of the affected land. Kenny Heights accepted the offer under protest. LLM paid the compensation sum to Kenny Heights.

[70] Kenny Heights was dissatisfied with the compensation sum and filed its objection in Form N on 10 July 2000 and hence the reference to the High Court.

[71] The appellant, Sistem Penyuraian Trafik KL Barat Sdn Bhd (hereinafter referred to as 'SPRINT') by summons in chambers dated 25 May 2001 applied for leave, inter alia, to intervene. SPRINT failed to identify the capacity in which it intends to intervene. This court in *Aik Ming (M) Sdn Bhd & Ors v Chang Chuen & Ors and another appeal* [1995] 2 MLJ 770 at p 791 has advised litigants on the procedure to be adopted when an intervener application is to be made. The correct prayer is that the proposed intervener be added as a co-defendant and not as 'intervener'. Further directions are also to be made on the pleadings by the parties, including an order that the plaintiff do plead its case against the added co-defendant. This is how it was expressed in *Aik Ming*:

> In any event, when the application came to be made, there ought to have been a prayer in the summons asking for an order that the intervener be added as a co-defendant and for directions on the delivery of pleadings by the parties, including a direction requiring the plaintiffs to plead their case against the added co-defendant.

[72] The principles of law applicable to intervener applications was laid down by the Supreme Court in *Tajjul Ariffin bin Mustafa v Heng Cheng Hong* [1993] 2 MLJ 143 at p 151. I wish only to reiterate here the first of the six principles, viz:

(1) The principle of overriding importance is that all necessary parties, but no others should be before the court at the same time to enable the effectual and complete determination and adjudication to be made by the court of all questions and issues between the parties which arise for decision (see O 15 r 4 and 6 of the RHC).

[73] It is patently clear that SPRINT cannot be added as a co-defendant in a reference to court by the land administrator under the provisions of the LAA 1960. The reference is not a civil suit where the land administrator is the plaintiff. The documents submitted to the court in the reference by the land administrator are not 'pleadings'. The reference record is primarily the notes of the enquiry by the land administrator, including valuation reports, and the notices under ss 4, 8, 10, 11, 14, 16, 19, 20, 22, 38(1) and 38(5) of the LAA 1960. *Intervener proceedings are therefore eminently unsuitable in a reference to court by the land administrator*. The scheme of the Act clearly suggests the only way a 'person interested' can legitimately appear in court at a reference

is upon written application in Form N under s 38(1) of the LAA 1960 or upon receipt of a notice in Form P from the court under s 43 of the LAA 1960.

[74] The main ground on which SPRINT relies to support its application to intervene in the reference is that SPRINT alleges that it is the party responsible to pay the compensation sum pursuant to a privatisation agreement entered into with the Government of Malaysia. This purported responsibility to pay by SPRINT is irrelevant to the restricted scope of the inquiry under s 44 of the LAA 1960. In any event, on the undisputed facts, the affected lands were acquired by the land administrator on behalf of LLM and the compensation sum was paid by LLM. It is beyond dispute that LLM is legally and statutorily obliged to pay the compensation sum under s 22 of the Highway Authority Malaysia (Incorporation) Act 1980. SPRINT did not at any time assert in the enquiry held before the land administrator under s 12 of the LAA 1960 that SPRINT was prepared to pay any compensation sum awarded to Kenny Heights. *SPRINT did not tender any valuation report to the land administrator at the enquiry*.

[75] LLM is most certainly entitled to receive a notice from the court under s 43 of the LAA 1960 in Form P of the hearing of the reference relating to the objection on the compensation sum by Kenny Heights, as LLM would fall under category (b) of persons listed in s 43 of the LAA 1960 viz:

(a) ...

(b) the person or corporation, if any, on whose behalf the proceedings were instituted pursuant to s 3;

(c) ...

(d) ...

[76] In the above circumstances, the application to intervene by SPRINT in the reference to court by the land administrator under the provisions of the Land Acquisition Act is without merit and not sustainable. The application by SPRINT to intervene is an abuse of the process of court and contributes to an unnecessary delay in the speedy disposal of the reference. *The issue in the reference is not as to which party is responsible for the payment of the compensation sum to Kenny Heights* but on the question of the quantum of the compensation sum awarded to Kenny Heights by the land administrator.

A [77] The appeal is dismissed with costs. The order of the High Court judge is affirmed. Deposit to account of taxed costs of the respondents.

Appeal allowed with costs.

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Reported by Mashrifah Ravendran

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